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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) MS1 0789US	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>8/18/05</u> Signature <u>Rachel Murphy</u> Typed or printed name <u>Rachel Murphy</u>		Application Number <u>09/882,810</u> Filed <u>6/14/2001</u> First Named Inventor <u>Shannon J. Chan</u> Art Unit <u>2131</u> Examiner <u>Taghi T Arani</u>	
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. <u>34618</u> Registration number <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		Signature <u>Daniel L. Hayes</u> Daniel L. Hayes Typed or printed name 509-324-9256 Telephone number <u>8/18/05</u> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input type="checkbox"/> *Total of _____ forms are submitted.			

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AUG 18 2005

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No. .... 09/882,810  
 Filing Date ..... 6/14/2001  
 Confirmation No. .... 7986  
 Inventorship ..... Chan et al.  
 Applicant ..... Microsoft Corporation  
 Group Art Unit ..... 2131  
 Examiner ..... Arani, Taghi T  
 Attorney's Docket No. .... MS1-789US  
 Title: Key Exchange Mechanism for Streaming Protected Media Content

PRE-APPEAL BRIEF

Independent claims 1, 13, 19, 24, and 27 have been rejected as being anticipated under §102 by the Spies reference. The Examiner's error in making this rejection is plainly illustrated by the following two paragraphs, taken from page 2 of the 5/31/05 Office Action:

As per independent claims 1, 13, 19, 24, and 27, the Applicant merely argues that the cited prior art of Spies does not describe exchanging keys between a DVD drive and any other component and that it does not disclose passing one or more keys from a DVD. The Applicant admits (page 12 of the REMARKS) of Spies discussing various types of keys and communication of keys between different components, including servers and clients, but argues that Spies does not disclose passing keys from DVDs (page 9 of the REMARKS).

The Examiner responds that independent claims 1, 13, 19, 24, and 27 are rejected based on U.S.C. 102(b) and the functional elements of exchanging keys were found to be substantially anticipated by Spices, where the program key is exchanged between purchaser and merchant units using pair of public and private exchange keys (col. 3, lines 19-51, see also col. 11, lines 46+) to obtain decryption capabilities.

A §102 rejection requires that each and every element of a claim be present in a single reference, arranged as claimed. Claim 1, as an example, recites that a client and server "pass one or more keys *from the DVD* to the key exchange client

1 "... Spies does not show this, as the Examiner impliedly admits in the passage  
2 above.

3 In response to the argument that Spies does not show passing keys from  
4 DVDs, the Examiner has maintained that even so, Spies "substantially" anticipates  
5 the claims. The Applicant respectfully submits that this does not meet the  
6 requirements of §102. Spies does not show all the elements of the independent  
7 claims, and therefore does not anticipate the claims.

8 Withdrawal of the rejections is therefore requested.

9  
10 Respectfully Submitted,

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12 Dated: 8/18/05

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